HOUSE BILL No. 1115

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-3-11; IC 21-9-7-1.

Synopsis: College savings tax credit. Provides a refund of adjusted gross income tax payments made by a taxpayer who deposits money in the Indiana family college savings trust fund for a dependent. Requires the department of state revenue to pay the refund into the individual trust account of the dependent. Makes the refund nontaxable. Provides a penalty for withdrawals from the Indiana family college savings trust fund that are not used for an allowable purpose of the fund.

Effective: January 1, 1999 (retroactive); January 1, 2000 (retroactive).

Klinker

January 6, 1999, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1115

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3-3-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 11. (a) As used in this section, "dependent" means a person who the taxpayer is eligible to claim as a dependent on the taxpayer's federal income tax return for the taxable year under Section 151 of the Internal Revenue Code.**

(b) As used in this section, "family college savings" means deposits made to an individual trust account in the Indiana family college savings trust fund under IC 21-9.

(c) As used in this section, "higher education institution" has the meaning set forth in IC 21-9-2-16.

(d) As used in this section, "individual trust account" has the meaning set forth in IC 21-9-2-17.

(e) As used in this section, "taxpayer" means an individual filing a separate return or a husband and wife filing a joint return.

(f) A taxpayer is entitled to the credit specified in subsection (g)

for a taxable year in which the taxpayer deposits family college savings in an individual trust account for the taxpayer's dependent.

(g) The amount of the credit under this section is equal to the lesser of:

(1) fifty percent (50%) of the aggregate of the family college savings deposited by the taxpayer for the taxpayer's dependent; or

(2) two hundred fifty dollars ($250) per dependent.

(h) A credit under this section must be claimed in conformity with the procedures established by the department of state revenue.

(i) The department of state revenue shall deposit the lesser of:

(1) the amount determined under subsection (g) plus any amount carried forward under subsection (j); or

(2) the taxpayer's adjusted gross income liability for a taxable year;

in the individual trust account in which the taxpayer made a deposit of family college savings for a dependent as an additional credit. Money deposited under this section may be used only for a purpose for which other money in the individual trust account may be used. The deposit under this section is exempt from taxation under this title.

(j) If in any year the amount determined under subsection (f) exceeds the amount of the taxpayer's adjusted gross income tax liability, the taxpayer may carry the excess over to the immediately following three (3) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this section for any subsequent year.

(k) If:

(1) a credit was taken under this section for family college savings; and

(2) the amount deposited is withdrawn from the Indiana family college savings trust fund and not used in conformity with the purposes of the Indiana family college savings trust fund, as determined under the policies and procedures specified by the board of directors of the Indiana education savings authority under IC 21-9-7-1;

the taxpayer receiving the credit is subject to a penalty in the year of the withdrawal. The amount of the penalty is the amount of credits given under this section on the amount withdrawn, excluding any earnings on the amount deposited. The amount of

the penalty shall be treated as other penalties imposed under IC 6-8.1. However, the board of directors of the Indiana education savings authority may provide for the withholding of a penalty imposed under this subsection from amounts withdrawn from the Indiana family college savings trust fund and the direct payment of the amount of the penalty to the department of state revenue. The department of state revenue may provide by rule adopted under IC 4-22-2 for the waiving of a penalty imposed under this subsection in the case of hardships or special circumstances affecting the account owner (as defined in IC 21-9-2-4) or account beneficiary (as defined in IC 21-9-2-3).

SECTION 2. IC 21-9-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: Sec. 1. In addition to any other powers granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this chapter, IC 21-9-8, and IC 21-9-9, the purposes and objectives of the family college savings programs that may be established under this article, and the powers delegated by other laws or executive orders, including the following:

(1) To establish policies and procedures, including penalties, to govern withdrawals from accounts in the event of:

(A) the death or disability of an account beneficiary;

(B) the denial of admission or acceptance by a higher education institution of an account beneficiary; ~~and~~

(C) other hardships or special circumstances affecting account owners and account beneficiaries; ~~However,~~ **and**

(D) a withdrawal used for a purpose other than an allowable purpose at a higher education institution.

The authority must establish penalties for ~~early~~ **the** withdrawal **or use** of money from accounts in circumstances other than hardships ~~described in this subdivision.~~ **affecting account owners or account beneficiaries.**

(2) To establish policies and procedures regarding the transfer of individual accounts and the designation of substitute account beneficiaries.

(3) To establish policies and procedures for withdrawal of money from accounts for, or in reimbursement of, allowable expenditures.

(4) To establish policies and procedures regarding recapture of all or a part of prior or current benefits or incentives allocated or allocable to accounts, including **the penalty under IC 6-3-3-11. The board may**, in appropriate circumstances in the board's

judgment, recapture as a precondition to withdrawal.

(5) To enter into agreements with account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner, who must be an adult or emancipated minor; and

(B) the account beneficiary, who may also be the account owner, if qualified.

(6) To establish accounts for account beneficiaries. However:

(A) the authority shall establish a separate account for each account beneficiary; and

(B) an individual may be the beneficiary of more than one (1) account.

(7) To enter into agreements with financial institutions relating to accounts as well as deposits, withdrawals, penalties, recaptures of benefits or incentives, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

(8) To conform the trust program and the account program to federal tax advantages or incentives, as the advantages or incentives may exist periodically, to the extent consistent with the purposes and objectives of this article.

(9) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly considering the purposes and objectives of this article.

SECTION 3. [EFFECTIVE JANUARY 1, 2000 (RETROACTIVE)] **IC 6-3-3-11, as added by this act, applies only to taxable years beginning after December 31, 1999.**

SECTION 4. **An emergency is declared for this act.**